**PUBLIC PROSECUTOR**

**v.**

**LEE WENG THYE**

HIGH COURT MALAYA, JOHOR BAHRU
LC VOHRAH J
[CRIMINAL TRIAL NO. 20 OF 1984]
25 MAY 1990

***CRIMINAL PROCEDURE:*** *Trafficking dangerous drugs - Sections 39B(1)(a), 39B(2) and 39A Dangerous Drugs Act 1952 - Drug addict - Unaware of amount needed to support addition - Offence of possession.*

The accused was charged with an offence under s. 39B(1)(a) of the Dangerous Drugs Act (the Act) in relation to 62.6 gms of the heroin. After the prosecution had presented its case, the accused was called upon to make his defence, which he did, mainly that he was a drug addict and had not realised that the amount which he had in his possession at the time of arrest made him liable to a charge under s. 39B(1) of the Act.

**Held:**

**[1]** On the evidence, the Court was satisfied that the accused was a confirmed heroin addict and required a continuous supply for his addiction. The presumption of trafficking was therefore rebutted as there was no means for a person like the accused knowing how much heroin a person in his addictive stage required daily to support his addiction.

**[2]** The unequivocal admission by the defence that the accused was in possession of 62.2 gms of heroin clearly attracted the offence of possession under s. 39A.

*[Accused sentenced to life.]*

**Legislation referred to:**
Dangerous Drugs Act 1952, ss. 39A, 39B(1)(a), (2)

*For the prosecution - Saufee Affandi, Deputy Public Prosecutor*
*For the accused - Karpal Singh; M/s. Karpal Singh & Co.*

**JUDGMENT**

**LC Vohrah J:**

The accused was charged with an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 in that he on 18 January 1984 at about 9.00p.m. of Jalan Songkit Empat, Taman Sentosa, in the District of Johor Bahru, in the State of Johor, did traffic in 62.6 grammes of heroin, an offence punishable under s. 39B(2).

On 18 January 1984 at about 9.00p.m. whilst Corporal Muda bin Mohd. (PW1) of the Johor Bahru Central Police Station was taking a stroll in front of his house at No. 4, Jalan Songkit, Taman Sentosa, Johor Bahru, he perceived the accused walking rather hurriedly. He approached the accused and, recognising him as a known drug addict, stopped the accused upon identifying himself as a police officer and requested the accused to reveal any drugs that were on his person. The accused then took a packet wrapped in Chinese newspaper (P1A) out of his pocket. PW1 unwrapped it and found inside it a plastic packet (P1) which he suspected to contain drugs. PW1 then handcuffed the accused and proceeded to telephone ASP Mohd. Ali (PW2) of the Drugs Unit, Central Police Station, Johor Bahru, who arrived at

the scene 15 minutes later and took delivery of the accused and the newspaper packet. The suspected contents of the packet were later analysed by the Government Chemist (PW3) and found to contain 62.6 grammes of hereoin.

Upon these essential facts of the prosecution being made out and unchallenged in any way by the defence and upon Counsel for the accused indicating that he did not wish to submit that there was no case to answer at the end of the prosecution case. I called upon the accused to make his defence.

The accused, aged 39 years, testified that at the time in question he was staying in a rented room with a woman called Cheng Yee Yin at a house in Jalan Songkit Empat, Taman Sentosa, Johor Bahru. She was then 26 or 27 years old and worked at a bar earning between RM3,000 to RM4,000 per month. At the time of his arrest he had cohabited with her for about five years and she gave all her earnings to him for him to keep for her. PW1 did ask him to take out what was in his pocket when he was arrested and he produced a packet of heroin. He was an addict at that time and had just purchased it from a person called Ah Kee who resided in Taman Seri Tebrau for RM400. He had bought the packet for his own consumption as he had been an addict since 1972. The packet would have lasted him for 3 weeks as he needed to smoke 5 to 6 times a day by "chasing the dragon" - a method which involved his inhaling the fumes of the heroin placed on a cigarette tin foil heated continuously by means of lighted matches. He had bought such a large amount that day for fear that if he had purchased smaller amounts daily he would have been caught. He had never sold hereoin to others and had started his habit in Ipoh. The day following his arrest he was sent to the hospital for a urine test and was questioned by ASP Chong Thian Soo (DW2). In cross-examination, he stated he and Cheng Yee Yin spent her earnings together and she supported him because of their affection for each other and because she did not want him to wander about in town and get caught by the police. Whenever he bought drugs he did not buy them by weight but in plastic tubes measuring 4 to 5 inches in height and 1 inch in diameter. He was a heavy drug-user and every time he suffered from withdrawal he would have to smoke. During the period of his remand after arrest when withdrawal set in he had to lie down and roll in order to resist the pain at which time he always felt like vomitting.It took him about a month to overcome withdrawal during remand. He did not traffic in drugs and did not realize that the amount he had in his possession at the time of his arrest made him liable to a charge under s. 39B(1) of the Dangerous Drugs Act although he was aware of the offence of possession of heroin exceeding 15 grammes from television and radio advertisements. He was however not aware how much the physical bulk of 15 grammes of heroin amounted to.

The evidence of DW2, who interrogated the accused on the day of following his arrest, confirmed that the accused showed withdrawal symptoms during interrogation.

Further evidence was adduced in support of the defence through Dr. Jamilah Jamaludin (DW3) who attended on the accused also on the day after his arrest. She confirmed that the accused was a drug addict at the time when she examined him. Her opinion was based on her physical examination of the accused and on his urine test. She opined that if he had been taking drugs for 4 years (as intimated to her) he would then be highly dependent on heroin.

In the light of PW1's evidence that the accused was a known drug addict and showed signs of his addiction at the time of his arrest, of DW2's evidence that the accused showed withdrawal signs during interrogation the day after his arrest and of DW3's medical evidence that he was highly addicted to heroin, I was more than satisfied that the accused was a confirmed heroin addict and required a continuous supply for his addiction. I considered

this fact in the light of the large amount of heroin he was carrying in his trouser-pocket on the night of his arrest and, having regard to his explanation that it was meant to last him for 3 weeks, I was of the view that the presumption of trafficking was rebutted as there was no means of knowing how much heroin a person in his addictive stage required daily to support his addiction by inhalation known colloquially as "chasing the dragon". The smallness of the packet of heroin recovered from his person on the night in question which fitted his trouser-pocket lent credence to his story that the heroin was for self-consumption. However the unequivocable admission by the defence that the accused was in possession of 62.2 grammes of heroin clearly attracted the offence of possession under s. 39A of the Act. I therefore found him guilty of possession of heroin thereunder and entered a conviction. Although it was indicated to the Court that he had no criminal record, having regard to his age and his realisation at the time of arrest of the seriousness of the offence of possessing a large amount of heroin, I took the view that his offence deserved the full penalty prescribed by the law and accordingly sentenced him to life imprisonment and six strokes.

Also found at [1990] 2 CLJ 284